

CLEAN AIR ACT STATIONARY SOURCE PENALTY POLICY APPENDIX VII

RESIDENTIAL WOOD HEATERS 40 C.F.R. PART 60, SUBPART AAA

The Clean Air Act Stationary, Source Civil Penalty Policy ("the CAA penalty policy" or "the general penalty policy") provides the basis for determining the minimum civil penalty U.S. EPA will accept in settlement of enforcement actions taken pursuant to Title of the Clean Air Act. The CAA penalty policy provides guidance to pre-trial settlement of initial enforcement actions in district courts.

The New Source Performance Standard for Residential Wood Heaters, 40 C.F.R. Part 60, Subpart AAA, warrants a penalty scheme related to the CAA penalty policy, but adjusted to reflect certain unique features of the wood heater industry. Unlike other NSPS programs, for example, the wood heater standard regulates a mass-produced consumer product marketed nationally and is directed at manufacturers as well as retailers and distributors. In addition, management of the wood stove enforcement program will be centralized at Headquarters rather than delegated to the Regions.

This appendix should be used in conjunction with the general penalty policy to determine the preliminary deterrence amount, which is the sum of the economic benefit accruing from noncompliance and the gravity component reflecting the seriousness of the violation.³ This appendix retains in full the concept of adjusting the gravity component to provide equitable treatment of the regulated community. The penalty adjustments may be based upon consideration of the violator's: (1) degree of willfulness or negligence, (2) degree of cooperation, including prompt reporting of noncompliance and prompt correction of environmental problems, (3) history of noncompliance, (4) ability to pay, and (5) other unique factors.

The wood stove penalty policy details most of the violations articulated in the regulations and assesses a basic penalty for each. Of the factors set forth in the general penalty policy only the size of the violator matrix and the adjustment factors are retained completely. The matrix for length of time of

violation has been revised. All other factors are inapplicable to the wood stove penalty policy.

Every gravity component calculation will be based on a case-by-case examination of the facts underlying the enforcement ~ -' n developing the penalty values for these violations, we evaluated the relative importance of each respective requirement to the regulatory scheme. In certain instances, U.S. EPA may find that a deviation from a requirement is tantamount to a complete violation and hold the violator liable for the full amount of the assessed penalty. In other instances, however, U.S. EPA may believe that the deviation is minor and therefore assess a reduced penalty. As an example, consider the §60.538(b) violation, offering for sale a stove without a permanent label. If the stove has no label at all, the full penalty will be believed. If, on the other hand, the permanent label is merely deficient, not conforming to the requirements under §60.536(a)(1)(2), then the penalty amount assessed will likely be less than the full amount. The following violations fall into this none/deficient" category:

- 60.533(0)(2)
- 60.533(0)(3)
- 60.536(a)(1),(2)
- 60.537(a)(1),(2)
- 60.537(a)(1),(3)
- 60.537(a)(1),(4)
- 60.537(a)(1),(5)
- 60.537
- 60.537(e)(1),(4)
- 60.537(e)(2)
- 60.537(e)(3)
- 60.537(f)
- 60.537(g)
- 60.537(h)
- 60.537(I)
- 60.538(a)
- 60.538(b)
- 60.538(d)(1),(2)
- 60.538(d)(1)(ii)

parameter quality assurance program
emission test QA program
permanent label
maintain record of certification test
maintain record of parameter QA program
Maintain record of emission test QA program
maintain record of sales
maintain/produce sealed stove
apply for small manufacturer exemption
report number of exempted stove manufactured
maintain record of production
report biennially on certified model lines
maintain record of exempted stoves
maintain record of used stoves
maintain records for five years
operation of stove without permanent label
offer for sale a stove w/o permanent label
offer for sale a stove w/o temporary label
offer for sale a stove w/o owner's manual

For the other violations contained in pages 3 to 6 of this
penalty policy, U.S. EPA intends to assess the full amount.

CALCULATION OF GRAVITY COMPONENT

SIZE OF THE VIOLATOR (calculate once per violator)

Net worth of corporation or
net current assets of partnership:

| | |
|-----------------------------|---------|
| Under \$100,000 | \$1,000 |
| \$100,001 - \$1,000,000 | 2,000 |
| \$1,000,001 - \$5,000,000 | 8,000 |
| \$5,000,001 - \$20,000,000 | 12,000 |
| \$20,000,001 - \$40,000,000 | 20,000 |
| \$41,000,000 - \$70,000,000 | 40,000 |
| Over \$70,000,000 | 65,000 |

LENGTH OF THE VIOLATION (calculate for each violation)

| | |
|-----------------|-------|
| 0 to 6 months | \$500 |
| 7 to 12 months | 1,000 |
| 13 to 18 months | 1,500 |
| over 19 months | 2,000 |

VIOLATIONS OF 40 C.F.R. PART 60, SUBPART AAA

60.530(c)(2)

Sale of Oregon exempted stove after July 1,
1992

\$5,000 per model
line and \$500
per unit

60.530(c)(3)

Failure to notify of any modification to
Oregon certification
\$500 per unit

60.533(n)

Failure to perform certification testing
\$5,000 per model

line and \$500
per unit

60.533(o)(2)
Failure to conduct adequate parameter QA
inspection
\$500 per unit
not tested as
required

60.533(o)(3)
Failure to conduct emission test QA program
\$500 per unit
not tested as
required

60.536(a)(1), (2)
Failure to have permanent label on stove
manufactured after July 1, 1988 (related to
60.538(b), but we can bring both in an
enforcement action)
\$2,000 per model
line and \$2 per
unit

60.536(I), (j)

Failure to have temporary label on a stove
with a permanent label

\$1,000 per model

line and \$2 per
unit

60.536(k)

(please see 60.538(d)(l(ii)))

60.537(a)(1), (2)

Failure to maintain record of certification
test

\$100 per model

line

60.537(a)(1), (3)

Failure to maintain record of parameter QA
program

\$1,000 per model

line

60.537(a)(1), (4)

Failure to maintain record of emission test
QA program

\$1,000 per model

line

60.537(a)(1), (5)

Failure to maintain record of sales

\$1,000

60.537

Failure to maintain or produce sealed stove

\$750 per sealed

stove required

60.537(e)(1), (4)

Failure to apply for small manufacturer's exemption
\$250

60.537(e)(2)

Failure to report number of exempted heaters manufactured between 7/1/88 and 6/30/89
\$500

60.537(e)(3)

Failure to maintain wood heater production records for 7/1/87 to 7/1/89
\$1,000

60.537(f)

Failure to report biennially on certified model line
\$100 per model line

60.537(g)

Failure to maintain record of F&D exempted stoves
\$500

60.537(h)

Failure to maintain record of used stoves
\$500

60.537(I)

Failure to maintain records for five years
\$500

60.538(a)

Operation of affected facility without a permanent label

\$500 per unit

60.538(b)

Offer for sale a stove without certification
test or permanent label
\$2,000 per model
line and \$2 per
unit

60.538

Offer for domestic sale of export stove
\$1,000 per unit

Sale of stove without a permanent label
after July 1, 1990
\$1,000 per unit

60.538(d)(1)(I), (2)

Offer for sale a stove with a permanent
label but not temporary label
\$1,000 per model
line and \$2 per
unit

60.538(d)(1)(ii)

Offer for sale a stove with a permanent
label but no owner's manual (encompasses
60.536(k))
\$500 per unit

60.538(d)(1)(iii)

Offer for sale a stove with a permanent
label but without a catalyst warranty
\$1,000 per model
line and \$2 per
unit

60.538(e)

Sale of stove after notice of certification
revocation

\$5,000 per unit

60.538(f)

Installation or operation of stove
inconsistent with label or owner's manual
\$2,000 per unit

60.538(g)

Operation of stove with deactivated or
removed catalyst
\$2,000 per unit

60.538(h)

Operation of altered stove
\$5,00 per unit

60.538(I)

Alteration or removal of permanent label
\$1,00 per unit

EXAMPLE

An inspector files a violation report against Blockbuster Manufacturing, which produces the Blue Flame and Heat Jet model lines. The report, dated November 8, 1988, states that the temporary label on the Blue Flame model line is deficient and that the company failed to conduct certification testing on the Heat Jet model line. In addition, the Heat Jet model line lacks permanent and temporary labels as well as owner's manuals. Blue Flame production since July 1, 1988 totaled 464 units with sales of 223 units, while Heat Jet production since July 1, 1988 totaled 108 units with sales of 36 units. Blockbuster's net worth is estimated at \$800,000.

The initial assessment of Blockbuster's violations indicates the following violations by model line:

Blue Flame

- attaching deficient temporary label
- selling unit with deficient temporary label

Heat Jet

- failure to conduct certification testing
- failure to attach permanent label
- selling unit without permanent label

(NOTE: the temporary label and owner's manuals violations are inapplicable for the Heat Jet model line because the units were not permanently labeled)

U.S. EPA issues a Finding of Violation to Blockbuster which includes both the Blue Flame and Heat Jet violations. In addition, an Administrative Order is issued to correct these violations. Blockbuster does correct all the Blue Flame violations by the stated deadline, but does not take any action toward correcting the Heat Jet violations. When contacted by EPA personnel after the deadline, Blockbuster says it feels no obligation to correct the Heat Jet violations. At this point, EPA decides to bring a civil action against Blockbuster concerning the Heat Jet model line only.

The preliminary deterrence amount is calculated by adding the economic benefit and gravity components. The economic benefit component is subdivided into two categories: capital investments, or one-time costs, and annual expenses. For this example, current

capital investments are \$9,000 for a full test series and \$4,000 for model line labels and manuals. Current annual expenses include \$3,067 for emissions and parameter inspection quality assurance and SI, 400 for research and development EPA personnel run the BENT model assuming compliance in April 1989 and the payment of penalty in March 1989. The BEHL model shows an economic-benefit of \$3,252. A copy of the BENT printout is attached for reference. The gravity component of \$66,788 is calculated as shown below:

Violation
Basic
Rate
Per
Unit
Length
of Time
Size of
Violator

No certification test
60,533(n)
\$5,000
\$500(108
)
\$500
\$2,000

Not attaching
permanent label
60.536(a)(1), (2)
2,000
2(108)
500

Selling unit without
permanent label
60.538(b)
2,000
2(36)

In light of Blockbuster's lack of cooperation in correcting the Heat Jet violations, EPA decides to increase the gravity component by 25%. The gravity component becomes $\$66,788(1.25) = \$83,485$. The bottom line amount for the purposes of settlement is $\$3,252$ (the economic benefit) + $\$83,485$ (the adjusted gravity component) = $\$86,737$.